



(916) 323-7713

September 10, 1985

Dear :

**Possessory Interest Assessment
Reconciliation of Rule 23(b) with
American Airlines v. County of Los Angeles (65 Cal.App.3d 325)**

This is in response to your letter dated August 20, 1985, in which you ask that we discuss Rule 23(b) in light of American Airlines v. County of Los Angeles. You say you have difficulty reconciling the rule with the case when appraising the Strawberry Town and Country Shopping Center located in Marin County. You tell us the Center contains approximately 75 tenants and is 65 percent owned by the Regents of the University of California and 35 percent by private parties. We understand that because of the many leases with their respective varying terms, you desire to use the provisions of Rule 23(b), which affords the assessor the latitude of presuming a reasonably anticipated term of possession, though it is longer than the stated period. You feel that utilizing the provisions of Rule 23(b) would avoid a virtually unmanageable assessment procedure of measuring the individual possessory interests by the terms of the respective varying rental contracts.

In my view, Rule 23(b) and the American Airlines case can be reconciled. Rule 23(b) affords the assessor the latitude of presuming a term of possession that is reasonable in light of an anticipated term of possession by the possessor and any successor to or assignee of the property interest, when the assessor determines there is a conflict between the terms stated in the written instrument creating the possessory interest and the reasonably anticipated term of possession. Rule 23(b) enumerates facts which are intended to guide the assessor in establishing a reasonably anticipated term of possession. The rule does not afford the assessor the liberty to determine a term of possession when the written instrument

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clearly states a term of possession that is not in conflict with a reasonable anticipated term of possession. American Airlines is a case where the California Appellate Court found the term of possession to be clearly stated by the written lease instrument. The Court was not persuaded by the evidence that the assessor had demonstrated that the Airlines had a possessory interest in the leased premises following the expiration of the stated term of the lease. So, the thrust of the American Airlines case is not a declaration that Rule 23(b) is invalid, but is a holding that to apply Rule 23(b) there must be persuasive evidence that the possessory interest to be valued extends beyond the stated terms of the lease. It holds that a possessor's relation to the leased property at the end of the lease must demonstrate a hope or expectation of future use that is capable of private ownership in the sense the possession is property within the meaning of Revenue and Taxation Code Section 103.

The property taxation of a possessory interest is merely the taxation of a part of the property rights owned by government which have become vested in a private party by reason of the party's right to use the property. By its very nature, a possessory interest can never be equivalent to fee interest. Therefore, the utilization of the term of possession is an absolute necessity when measuring the extent or value of the possessory interest. I am not aware of any situation in which a possessory interest can be valued without consideration of the possessory term. As unhappy as the thought may be, I conclude you must examine each and every leased contract in the shopping center to determine, either by the terms of the lease agreement or by the conduct of the parties, if you are justified in utilizing the provisions of Rule 23(b). Unfortunately, this disagreeable investigative process comes with the job of assessing possessory interests.

I get the impression you would like to assess the shopping center in fee and merely send the University of California a tax bill for 65 percent of the assessment, in line with their proportional ownership interest. As attractive as this solution may be, I can find no authority for its application. The fact remains that the University of California is exempt from property taxes and its portion of the property rights in the shopping center may not be taxed. Only the private possessor of the University's property may be assessed and then only to the extent his right to possession can be expressed in terms of "Property" within the meaning of Revenue and Taxation Code Section 103.

Very truly yours,

Robert R. Keeling
Tax Counsel

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